THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN

W.A.Nos.2057 & 2058 of 2001

& W.P.No.23054 of 2002

Kanyakumari Mavatta Meen Pedikkum
Thozhilalar Sangam Reg.No.104/KKM
No.51, Meenakshipuram
Nagercoil-1 rep.by its
President Mr.G.Selestine. ..Appellant in W.A.No.2057 of 2001/
Respondent

S.Joseph Gerald ..Appellant in W.A.No.2058 of 2001/
Respondent

-Vs.-

1. Government of Tamil Nadu
rep.by Secretary to Government
Revenue Department
Fort St.George
Chennai-9.

2. The Secretary to Government
Backward Classes, Most Backward
Classes and Minorities Welfare Department
Fort St.George
Chennai-9.

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3. The District Collector
Kanyakumari District at
Nagercoil. .Respondents in both appeals/
Respondent

S. Surjith .Pettiioner in W.P.No.23054 of 2002

-Vs.-

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1. Government of Tamil Nadu
   rep.by its Commissioner and
   Secretary to Government
   Revenue Department,Fort St.George
   Chennai-9.

2. Commissioner and Secretary to Government
   Backward Classes Welfare Nutrition
   Meals Programme and Social Welfare Department
   Fort St.George, Chennai-9.

3. The Tahsildar
   Agasthesswaram Taluk
   Kanyakumari District.

4. The Secretary
   Tamil Nadu Engineering Admission
   Anna University, Chennai-25. ..Respondents in the W.P.No. 23054/02

Writ appeals against the common order dated 16.7.2001 in Review Application Nos.66 and 65 of 2001 in W.P.Nos.17070 of 1998 and W.P.Nos.5075 of 1997 respectively.

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order in G.O.M.S.No. 1509 Revenue Department, dated 27.11.1991, quash the same in so far as it relates to Paravar Christians in Kanyakumari District and Shencottai Taluk of Tirunelveli-Kattabomman District under the Caption "Conversion Cases" in the Annexure to the said Government order, and direct the Respondents to treat Paravar Christians in Kanyakumari District and Shencottai Taluk of Tirunelveli Kattabomman District as Most Backward Class as per Government Order G.O.Ms.No. 242, Backward Class Welfare Nutritious Meal Programme and Social Welfare Department, dated 28.3.1989 as amended in Government Letter No. 42124/BCC/89-6 Backward Class, Nutritious Meal Programme and Social Welfare Department, dated 14.8.89 and G.O.M.No. 1566, Social Welfare Department dated 30.7.1985, respectively.

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of a Writ of Mandamus directing the 4th respondent to give admission to the petitioner in 1st year B.E.Degree Course for the year 2002-2003 under Most Backward Quota pursuant to G.O.Ms.NO.28, Backward and Most Backward Classes Welfare Department dated 19.7.1994.

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For Appellants & petitioner in WP : Mr.R.Subramanian, SC for Mrs.Hemalatha

For Respondents No.1 to 3 in Was & WP : Mr.L.S.M.Hasan Fizal, GA

COMMON JUDGMENT

(Judgment of the Court was delivered by P.K.Misra, J)

Heard Mr.R.Subramanian, learned Senior Counsel for the appellants and Mr.L.S.M.Hasan Fizal, learned Government Advocate for the respondents.

2. These two writ appeals are directed against the common order passed by the learned Single Judge in review application Nos.65 and 66 of 2001. The present appellants had filed W.P.Nos.5075 of 1997 and 17070 of 1998 respectively for quashing G.O.Ms.No.1509 dated 27.11.1991. The learned Single Judge after hearing the counsel for both parties had allowed the said writ petitions by a common order dated 4.8.2000. Subsequently the Government filed Review Application Nos.65 and 66 of 2001 against the said order. The learned Single Judge however at that stage allowed the review applications and dismissed the writ petitions. The two appeals are against the said order.

3. The connected W.P.No.23054/2002 was filed by a student in the year 2002 claiming that he should be treated as belonging to "Most Backward Community" as per G.O.Ms.No.28 of 1994 dated 19.7.1994 and should be given admission to a particular college. It is no doubt true, since the admissions to the particular college for that particular year and in fact for five subsequent years are over, no real relief could be granted to such petitioner. However the contentions raised in the said writ petition are also required to be noticed, as the said contentions are similar to the contentions raised in the two writ appeals.

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4. For appreciating the question involved, it would be necessary to notice the various facts and developments. G.O.Ms.No.437 dated 15.5.1972 contains the list of communities forming part of Backward Classes within the State of Tamil Nadu. As per Sl.No.20 of such list, converts to Christianity from Schedule Caste are considered as "Backward Class" throughout Tamil Nadu. As per Sl.No.76 “Paravar” is considered as belonging to "Backward Class" throughout Tamil Nadu. As per Sl.No.77 Paravar Christian (in Kanyakumari and Shencottah Taluk of Tirunelveli District) was considered as belonging to "Backward Class". At this stage it is necessary to notice that Hindu Paravar in Kanayakumari and Shencottah Taluk of Tirunelveli District had been included as belonging to Schedule Caste as per the Presidential notification and continues to be so.

5. Subsequently on the basis of the representation received from Christian Association to extend all concessions granted to Fisherman community (Hindus) to Fisherman Christians (Paravar Christians), the Government issued a notification declaring the Fisherman Christians belonging to Paravar, Mukkuvar or Mukayar, Parvatharajakulam, Pattanavar, Sembadavar, Meenavar communities in Tamil Nadu as socially and educationally backward class of citizens within the meaning and for the purpose of Article 15(4) of the Constitution of India. Accordingly amendment was made in respect of entries 64,76 and 79 by including Mukkuvar or Mukayar including converts to Christianity, Paravar including converts to Christianity, Meenavar (Parvatharajakulam, Pattanavar, Sembadavar) including converts to Christianity as belonging to "Backward Class". In such amendment, entry No. 77 was omitted. That was obviously because as per entry 76 Paravar including converts to Christianity had been included and therefore there was no necessity to continue a separate entry as per Sl.No.77.

6. Subsequently, G.O.Ms.No.1566 dated 30.7.1985 was issued indicating certain communities to form part of "Most Backward Class" for educational purposes. As per Sl.No.27 Paravar (Except in Kanyakumari District and Shencottah Taluk of Tirunelveli District where the community is Scheduled Caste) was considered as "Most Backward Class" for educational purposes. Sl.No.28 indicated Meenavar (Parvatha Rajakulam, Pattanavar, Sembudavan) including converts to Christianity as "Most Backward Class". Thereafter G.O.Ms.No.242 dated 28.3.1989 was issued wherein the above communities were treated as "Most Backward Class" for the purpose of appointment in public service.

7. Subsequently representations having been received from the Christian Association, the Government decided to amend G.O.Ms.No.242 dated 28.3.1989. The amendment is to the following effect:

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" In the said Government order, in the Annexure under the heading "List of Most Backward Classes throughout the State of Tamil Nadu" for the entries against serial number 27, the following entries shall be substituted, namely :-

"27. Paravar (except in Kanniyakumari district and Shencottah taluk of Tirunelveli – Kattabomman district where the community is scheduled caste)(including converts to Christianity)".

8.In G.O.Ms.No.1509 dated 27.11.1991, it was clarified as follows:-

"If a person belonging to Scheduled Caste converts himself to Christianity, he will cease to belong to scheduled caste and he will be deemed to belong to Backward Classes. Backward Classes, Most Backward Classes and Denotified Communities converted to Christianity will be treated only as Backward Classes. There are certain exceptions. In the case of Meenavar parvatharajakulam, Pattanavar Sembadavar and Mukkuvar of Mukayar found in the list of Most Backward Classes, both the Hindus and Christian converts will be treated as Most Backward Classes vide G.O.Ms. No.1566 Social Welfare Department dated 30.7.1985 and G.O.Ms.No.929 Backward Classes, Welfare Nutritious Meals Programme an Social Welfare Department dated 7.11.89 respectively. In the case of paravar the Hindu Paravars will be treated as Most Backward Classes throughout the State except in Kanniyakumari District and Shencottah Taluk of Tirunelveli-Kattabomman District where the community is Scheduled Caste and Paravar Christians will be treated as Most Backward Classes throughout the state except in Kanniyakumar District and Shencottah Taluk of Tirunelveli District where the Paravar Christians will be treated as Backward Classes – vide Government letter No.42124/BCC/89-6, Backward Classes Welfare Nutritious Meals Programme and Social

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Welfare Department, dated. 14.09.1989."

9. Contending that such clarification was against the tenor of the amendment effected as per letter dated 14.9.1989, the two writ petitions viz., W.P.Nos.5075 of 1997 and 17070 of 1998 were filed. Such writ petitions were allowed in the first instance on the conclusion that in view of the amendment as per letter dated 14.9.1989, persons belonging to Paravar community in Kanyakumari District and Shencottah Taluk of Tirunelveli District on being converted to Christianity would be treated as belonging to "Most Backward Class." Subsequently, however those orders were reviewed in the review applications. The two appeals are against such orders passed in the Review Applications.

10. The only question to be decided is whether the persons belonging to Paravar Community in Kanyakumari District and Shencottah Taluk of Tirunelveli District, who are converted to Christianity should be treated as belonging to "Most Backward Class" or should be treated as belonging to "Backward class"?

11. The contention of the appellants is to the effect that keeping in view the history of the various amendments and Government Orders issued, it is obvious that the persons belonging to such Paravar community, who were converted to Christianity should be treated as belonging to "Most Backward Class" as per G.O.Ms.No.242 as amended on 14.9.1989. The learned counsel appearing for the State on the other hand has submitted that the conclusion of the learned Single Judge in the two review applications is correct and those persons belonging to Paravar Community in Kanyakumari District and Shencottah Taluk of Tirunelveli District, who were converted to Christianity should be treated only as belonging to "Backward Class" as per Sl.No.20 of G.O.Ms.No.437 dated 15.5.1972. It is submitted by the learned counsel for the State that the expression "except in Kanyakumari District and Shencottah Taluk of Tirunelveli District where the community is Scheduled Caste" also qualifies the subsequent expression "including converts to Christianity" and therefore the Paravar Community in Kanyakumari District and Shencottah Talu, if they belong to Hindu religion should be considered as belonging to "Scheduled Caste" and those who were converted to Christianity should be treated as belonging to "Backward Class".

12. We have already noticed in detail the various changes effected. As per Presidential notification, persons belonging to Hindu Paravar in Kanyakumari District and Shencottah Taluk of Tirunelveli District were members of Schedule Caste. There was a specific entry relating to Paravar Christian in Kanyakumari District and Shencottah Taluk of Tirunelveli District as per Sl.No.77 in G.O.Ms.No.437 dated

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15.5.1972 indicating that such persons belong to "Backward Class". If Sl.No.20 of the said Government Order was to be applicable to all coverts to Christianity from Scheduled Caste, there was no necessity at that stage to specifically include Paravar Christians in Kanyakumari District and Shecottah Taluk of Tirunelveli District as belonging to "Backward Class". One must also notice that at that stage Sl.No.76 relating to "Paravar" has come within "Backward Class" list. This obviously refers to Paravar Community throughout the State other than Kanyakumari and Shencottah Taluk in Tirunelveli District because such persons in Kanyakumari and Shencottah Taluk of Tirunelveli District were already included as Scheduled Caste as per Presidential Notification. Subsequently amendment was effected as per G.O.Ms.No.1116 dated 20.11.1978. At that stage all the six sub-sections of Fishermen and Fisherman converted to Christianity were brought within the fold of "Backward Class" as per entries 64, 76 and 79, which are extracted hereunder:-

> 64. Mukkuvar or Mukayar including converts to Christianity.
>
> 76. Paravar including converts to Christianity.
>
> 79. Meenavar (Parvatharajakulam, Pattanavar, Sembadavar) including converts to Christianity"

Since Paravar including converts to Christianity was already included as belonging to Backward Class as per Sl.No.76, there was no further necessity to continue Sl.No.77 and therefore, such entry was omitted. Subsequently, G.O.Ms.No.1564 indicated the above communities as belonging to "Most Backward Class" for educational purpose and G.O.Ms.No.242 indicated those persons as "Most Backward Class" for the purpose of public service and only because of the representation made b the Christian Association at that stage, the amendment was effected.

13. It is thus obvious, keeping in view the background, the intention was to treat all the converts from Paravar community throughout the State as belonging to "Most Backward Class". The expression "Except in Kanyakumari and Shecottah Taluk of Tirunelveli District where the community is Scheduled Caste" obviously has a reference to the Paravar community belonging to "Hindus, which was all along being treated as belonging to Scheduled Caste as per the Presidential notification.

14. Without keeping in view the background and history of such amendment, the learned Single Judge has subsequently reviewed the earlier order. In our considered opinion, the conclusion rendered originally by the learned single Judge in the writ petitions was

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correct and the subsequent order in the review applications was passed without keeping in view the real intention, background and the history of the amendment. In such view of the matter the order passed in the review applications is liable to be set aside and the order passed in the writ petitions is restored. Accordingly, the writ appeals are allowed.

15. Even though the above conclusion supports the main contention raised in W.P.No.23054 of 2002, no specific direction can be issued at this stage. However the petitioner in that case can seek for further remedy for any purpose in accordance with law. So far as the two appeals are concerned, necessary action shall be taken by the Government for issuance of community certificates to the persons belonging to Paravar Community converted to Christians throughout the State including Kanyakumari and Shencottah Taluk of Tirunelveli District as belonging to "Most Backward Class".

16. Clarification being contrary to the amendment, is of no effect so far as converted Paravars of Kanyakumari District and of Shencottah Taluk of Tirunelveli District are concerned. No costs.

Tr/dpk

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Secretary to Government,Revenue Department,Fort St George, Chennai-9.

2. The Secretary to Govt, Backward Classes, Most Backward Classes and Minorities Welfare Department, Fort St George, Chennai. -9.

3. The District Collector, Kanyakumari District at Nagercoil.

4.The Tahsildar, Agastheeswaram Taluk, Kanyakumari District.

5.The Secretary, Tamilnadu, Engineering Admission, Anna University, Chennai-25.

6.The Commissioner and Secretary to Govt, Backward Classes Welfare Nutrition Meals Programme and Social Welfare Department, Fort St. George, Chennai-9.

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7. The Section Officer, Writ Section, High Court, Chennai-104.

+ 2 Ccs to M/s. Hemalatha Advocate SR 74013

+One cc to Govt Pleader SR 74023

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2058 OF 2001 &
WP.No.23054 OF 2002

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